Supreme Court of Ireland Decisions

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Judgment Title: **Canty** -v- Private Residential Tenancies Board

Neutral Citation: [2008] IESC 24

Supreme Court Record Number: 271/07

High Court Record Number: 2006 5195 P

Date of Delivery: 30 April 2008

Court: Supreme Court

Composition of Court: Kearns J., Macken J., Finnegan J.

Judgment by: Kearns J.

Status of Judgment: Approved

Judgments by	Result	Concurring
Kearns J.	Appeal allowed	Macken J., Finnegan J.

Outcome: Allow Appeal

THE SUPREME COURT

Kearns J.
Macken J.
Finnegan J.

[Record No. S.C. 271/07]

IN THE MATTER OF THE RESIDENTIAL TENANCIES ACT 2004

BETWEEN

JACK CANTY

APPELLANT

AND

PRIVATE RESIDENTIAL TENANCIES BOARD

FIRST NAMED RESPONDENT

AND

DAVID CONNOLLY

SECOND NAMED RESPONDENT

JUDGMENT of Mr. Justice Kearns delivered the 30th day of April, 2008

This is an application brought on behalf of the first named respondent seeking an order striking out the appeal brought by the appellant from the judgment and order of the High Court (Laffoy J.) on 8th August, 2007. The appellant's appeal purported to challenge various rulings made by Laffoy J. in the High Court. He also sought to put in issue as being unconstitutional various provisions of the Residential Tenancies Act 2004.
This court, in an ex tempore ruling already delivered herein on 2nd April, 2008 determined it had no jurisdiction to hear the appeal by reason of the provisions of Section 123(4) of the Residential Tenancies Act, 2004. That sub-section provides:-

> *"The determination of the High Court on such an appeal in relation to the point of law concerned shall be final and conclusive."*

The court, however, reserved judgment on whether or not the appellant was nonetheless entitled to appeal the order for costs made against him by Laffoy J. in respect of the costs of the respondent and notice party which were awarded against him. The appellant contends that the wording of Section 124 is not sufficiently clear or specific to exclude the jurisdiction of this Court to entertain an appeal confined to the issue of costs.
By way of background, the second named respondent agreed to let to the appellant a dwelling house in Crosshaven, Co. Cork by a tenancy agreement dated 24th September, 2004. In 2005 a number of disputes arose in relation to the appellant's tenancy which came before the first named respondent. Following a number of hearings various determinations of the Board were formalised in a Determination Order dated 19th April, 2006. A further Determination Order was made on 6th October, 2006.
The appellant sought to challenge these orders pursuant to s.123 of the Residential Tenancies Act, 2004 which provides:-

> *"(2) A determination order embodying the terms of a determination of the Tribunal shall, on the expiry of the relevant period, become binding on the parties concerned unless, before that expiry, an appeal in relation to the determination is made under subsection (3).*

(3) Any of the parties concerned may appeal to the High Court, within the relevant period, from a determination of the Tribunal (as embodied in a determination order) on a point of law.
(4) The determination of the High Court on such an appeal in relation to the point of law concerned shall be final and conclusive."

The only question before the Court therefore is whether or not these statutory provisions are to be interpreted as denying a right of access to the appellant to this Court to argue the appropriateness or otherwise of the costs order made against him in the High Court.
It is clear from the wording of s.123 of the Residential Tenancies Act, 2004 that no appeal lies to the High Court from a determination of the tribunal on the merits or on the facts. It is a limited entitlement to appeal on a point of law only. In exercising its jurisdiction, the High Court did not purport to determine points other than various points of law which had been canvassed by the appellant. Its ruling therefore is *"final and conclusive"*.
Can a costs order in these circumstances have a quality or character which puts it outside the determination of the point of law so as to permit a limited appeal to this Court?
Article 34.4.3 of the Constitution provides:-

"The Supreme Court shall, with such exceptions and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court, and shall also have appellate jurisdiction from such decisions of other courts as may be prescribed by law."

In the ordinary course therefore, any decision of the High Court is subject to review by this court. It is not unusual for an appeal to come before this court which is solely confined to the issue of costs and the entitlement of an appellant in this regard is well settled (*In Bonis: Vella v Morelli* [1968] I.R. 11). On behalf of the first named respondent, Mr. Gerard Hogan, S.C. argues that the same constitutional provision makes it clear that the Oireachtas may restrict the appellate jurisdiction of the Supreme Court subject to the qualification in Article 34.4.4., which provides that:-

"No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to validity of any law having regard to the provisions of this constitution."

He points out, correctly, that this is not a case involving the determination by the High Court of any constitutional issue and no such issue is before this court. He relied on the decision of this court in *Minister for Justice v. Wang Zhu Jie* [1993] 1 I.R. 426 to argue that the decision of Laffoy J., including her decision as to costs, was final and conclusive and immune from further appeal to this court.
In that case it was held that the provisions of s.52 of the Courts (Supplemental Provisions) Act, 1961 should be construed as effecting an exception from the absolute right of appeal provided for in Article 34.4.4. of the Constitution from decisions of the High Court to the Supreme Court. However, having read the judgments delivered by Finlay C.J. and McCarthy J. in that case I find nothing in either judgment which addresses the specific point under consideration in the instant case. I believe therefore the Court is to some degree in uncharted waters.

In my view the question can only be resolved by considering the precise wording of any statute which purports to limit the right of appeal to this court. Thus, by way of example, s.50 of the Planning & Development Act, 2000 provides at s.50(4)(f)(i):-

> *"The determination of the High Court of an application for leave to apply for judicial review, or of an application for judicial review, shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case, except with the leave of the High Court, which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court."*

It seems to me, without in any way deciding an issue which was not before this Court, that the word *"decision"* of the High Court in s. 50 can be taken as including any determination of the issue of costs which forms part of its decision in the case. Similarly, section 42(8) of the Freedom of Information Act 1997 provides:-

> *"The decision of the High Court on an appeal or reference under this section shall be final and conclusive."*

Section 39 of the Courts of Justice Act 1936, which was re-enacted by section 48 of the Courts (Supplemental Provisions) Act 1961, provided as follows in relation to appeals to the High Court from the Circuit Court:-

> *"The decision of the High Court or of the High Court on Circuit on an appeal under this part of this Act shall be final and conclusive and not appealable."*

Again, I have no difficulty in construing these sections as altogether precluding any further appeal, even one confined to costs. By contrast, however, s.123(4) of the Residential Tenancies Act, 2004, which, if I may say so, is unsatisfactorily drafted in a number of respects, is much less clear. If the relevant sub-section simply referred to *"the determination of the High Court on such an appeal"* one could well argue that the decision of the High Court in relation to costs was incorporated in the determination. However, the wording contextualises the determination of the High Court by reference specifically *"to the point of law concerned"*.

The resolution of a point of law may on occasion compel a trial judge to determine a case in a particular way which may be contrary to the factual merits of the case. I am not saying any such situation arises in the instant case, but it is not difficult to imagine other cases where this could occur. In such a situation an appeal confined to the issue of costs might have significant merits.

For that reason, I think any statute which purports to altogether remove even a limited right of appeal on an issue such as costs should be so phrased as to make that intention clear. That is not to say that express wording in a statute is a prerequisite for this purpose, but rather that the overall intention that no further appeal should lie from any aspect of the decision of the High Court judge should be obvious from a reading of the provision in question.

In *The People (Attorney General) v Conmey* [1975] I.R. 34 this Court stated:-

> *"Any statutory provision which had as its object the excepting of some decisions*

of the High Court from the appellate jurisdiction of this (the Supreme) Court, or any particular provision seeking to confine the scope of such appeals within particular limits, would of necessity have to be clear and unambiguous."

I would therefore allow the appeal on this jurisdictional point and direct that the matter be listed for further hearing on the merits.
